

REMARKS

Reconsideration of this application is requested.

Claims 13, 26, 27, 29 and 30 have been amended as suggested by the Examiner. Accordingly, withdrawal of the Section 112, 2nd ¶ rejection is requested.

The Examiner is requested to reconsider the Section 103(a) rejection of claims 13, 15-22 and 24-29 as unpatentable over Shefer (2003/0152629). For one thing, Shefer is not early enough to be a reference against the present case. Thus, Shefer was not published until August 14, 2003 on the basis of an application Serial No. 10/387,907, filed March 13, 2003. The applicants have a U.S. filing date of March 26, 2001 (and an even earlier priority date). However, as will be evident, the applicants' U.S. filing date is almost 2 years earlier than the Shefer filing date.

Possibly the Examiner has cited Shefer because it is referred to as a continuation-in-part of Serial No. 09/696,148, filed October 25, 2000 and now issued as U.S. Patent 6,589,562. However, the Shefer published application, which the Examiner relies on, is not entitled to the parent filing date of October 25, 2000. This is immediately evident from the fact that the portions of Shefer 2003/0152629 relied on by the Examiner find no counterpart or equivalent disclosure in Shefer's issued parent. Thus, in rejecting the applicants' claims, the Examiner refers to the following portions of the published Shefer application for the indicated features:

Shefer 2003/0152629	Feature
¶ 0047 to 0048	20 to 100 micron particle size
0114	folic acid
0100	matrix components of applicants' claim 25
page 1, Col. 2, line 5	bulk density 0.5 g/cc

Review of Shefer 6,589,562 (the '562 patent) shows that the patent does not include any of the portions of Shefer's published application (the '629 application). Thus, Shefer '629 cannot be used by the Examiner to reject the claims.

The foregoing comments are not intended to suggest that the Examiner's selective use of the disclosure of the published '629 application would suggest the applicants' invention even if the reference could be relied on as prior art. In brief, there

is clearly nothing in the '629 application to suggest the applicants' invention. The Examiner's position is nothing more than a hindsight selection of bits and pieces from the '629 disclosure solely on the basis of the applicants' disclosure. This is not a proper foundation for rejection.

It is equally clear that the '562 patent itself is not in any sense suggestive of the applicants' invention.

More specifically, the '562 patent is specific to oral and hygiene products (Col. 4, line 36) such as gels, chewing gums, toothpaste and mouthwash (Col. 5, lines 24 to 26) and involves selective delivery to tooth surfaces (Col. 4, lines 61 to 67). Clearly, there is no suggestion in '562 of particulate systems for use in foods, as in the present invention. In fact, the skilled person would not consider the teaching in '562 as having any relevance to use in foods.

The applicants' invention involves food additives which are oleanolic acid, ursolic acid, folic acid, policosanol or phytosterols. There is no disclosure of these materials in '562. The encapsulated materials of '562 are biologically active agents or sensory markers (Col. 7, lines 14 to 18). Biologically active materials are drugs, anti-septics, antibacterials, anti-inflammatories and other materials relevant to the growth of bacteria on teeth (Col. 7, lines 54 to 58). Vitamins are mentioned, together with other optional components, at Col. 7, line 59, but no specific vitamins are disclosed in '562.

The applicants' invention clearly distinguishes over '562 because there is no disclosure or suggestion in the patent of the specific food additives claimed herein. Furthermore, the invention is not obvious from the '562 disclosure because there is nothing in '562 that is relevant to food products and there is certainly no disclosure in the patent as to how one would or could improve oral properties of a food product, the bioavailability of the specified food additives, or the dispersibility of the food additives in food (see the present specification at page 3, lines 6 to 10). Improvement of these properties forms the basis of the present invention.

Thus, in short, the published '629 application is not a valid reference against the applicants. Furthermore, even if the '629 application was available as prior art, its disclosure is not suggestive of the applicants' invention; and, finally, Shefer's issued '562 patent is not in any sense suggestive of the applicants' invention as claimed.

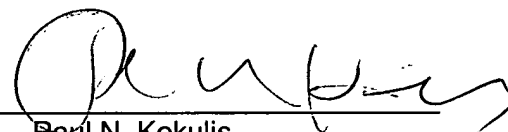
In view of the foregoing, the applicants submit that the Section 103(a) rejection of claims 13, 15-22 and 24-29 should be withdrawn and the claims allowed.

The allowance of claims 30 and 31 has been noted. With the present amendment, all of the applicants' other claims are also believed to be allowable. Accordingly, allowance of the application is requested.

The Examiner's attention is called to the Disclosure Submission with EPO Search Report filed on November 10, 2003 and the Supplemental Disclosure Statement, with attachments, which is being filed concurrently herewith. Consideration of these submissions and the return of initialed copies of the PTO-1449s included therewith are requested.

Respectfully submitted,

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